

Agenda

Item #4A



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: October 23, 2008

Re: Complaints Filed against Sen. Douglas Smith and Paul T. Davis

The Ethics Commission received four complaints alleging:

- The re-election campaign of State Senator Douglas M. Smith improperly used Maine Clean Election Act (MCEA) funds to purchase advertisements that benefited three House candidates, as well as his own campaign.
- Some large campaign road signs of Sen. Smith and House candidate Paul Davis failed to include a clear and conspicuous statement of the person who made the expenditure for the signs (referred to below as the "paid for" disclosure), in violation of 21-A M.R.S.A. § 1014(1) (attached).

After receiving more information from Sen. Smith and the Commission staff, the complainants have mostly withdrawn their complaints. Their status is:

- Jayson Allain and Tammy Lockhart have withdrawn their complaints entirely.
- James Glavine has withdrawn his complaint, except that he requests that the Commission provide better guidance to candidates in the future regarding the purchase of joint campaign materials.
- Sue Mackey Andrews is primarily interested in the Commission providing better guidance to all candidates regarding what constitutes a clear and conspicuous statement.

I anticipate that none of the complainants will be able to participate in the October 27 meeting in person.

Joint Advertisements

House candidates Jayson Allain, James Glavine, and Tammy Lockhart inquired whether they were entitled to receive matching funds under the MCEA because of two advertisements in the October 11 and 18 editions of the Eastern Gazette newspaper in support of Sen. Douglas Smith, Paul Davis, Peter Johnson, and Rep. Doug Thomas. The advertisements state that they were “paid for by Doug Smith for Senate”

Sen. Smith and Paul Davis will be represented by attorney Daniel I. Billings at your October 27 meeting, who will be able to provide more information regarding the purchasing and reimbursements for the advertisements. My general understanding is that the four candidates planned to purchase four advertisements in the Eastern Gazette for a total cost of \$600. They planned to share the expense equally (\$150 each). Rep. Doug Thomas and Peter Johnson have provided documentation of their \$150 reimbursements, which they made on October 22 after I telephoned them about this matter.

Some time ago, I received a telephone call from Paul T. Davis asking whether he and some other candidates could purchase a combined newspaper advertisement. I provided him with the usual staff advice on this subject: candidates may pay for joint advertising or literature without making a contribution to each other's campaigns as long as each candidate pays his or her proportional share of the total cost. That advice appears on page 72 of the 2008 Candidate Guidebook (attached).

Generally, when the Commission staff has received questions about joint expenditures, the staff has left it to the candidates to decide how to structure their payments to the vendor. Given the confusion that arose in this case, however, it may be beneficial for the Commission to provide more specific advice to candidates regarding:

- whether the candidates must make separate payments to the vendor, or whether a single candidate may purchase the materials with other candidates reimbursing the purchaser;
- how the “paid for” disclosure should appear on a joint advertisement or mailer (*i.e.*, should all candidates' names and addresses be listed?) to comply with 21-A M.R.S.A. § 1014; and
- whether MCEA candidates who purchase joint advertisement or literature should provide specific information on Schedule B of their campaign finance reports (*e.g.*, “joint advertising in Eastern Gazette”) to avoid the appearance that they are subsidizing each other's campaigns.

“Paid For” Disclosure on Signs

Sue Mackey Andrews and Jayson Allain complained that the road signs of Douglas Smith and Paul Davis lacked the required disclosure statement indicating the person who had made or financed the expenditures for the signs. Upon closer inspection, they acknowledged that the disclosure statement is now handwritten on the signs. Dan Billings has provided photographs of the handwritten disclosure, which are attached. Ms. Mackey Andrews inquires whether the handwritten disclosure meets the statutory requirement of a clear and conspicuous statement.

The Commission staff receives a large number of questions regarding compliance with the “paid for” disclosure requirements on hand-made signs and on commercially printed signs that are missing the disclosure statement. If you are willing, we believe it would be helpful for future candidates if you would adopt advice to candidates. As a very rough first-start, the staff suggests:

The Commission recommends that hand-made signs display the disclosure statement in the most clear and conspicuous manner possible. If the disclosure statement is not stenciled or painted on the sign or if a commercially printed sign is missing the disclosure statement, the Commission recommends that the disclosure statement be printed on laminated paper or cardstock or on labels or stickers by home or commercial printer. The disclosure statement should be attached to the sign using a method that will resist weather conditions for the six-week pre-election period, e.g., staples, glue, or strong transparent tape. The disclosure statement should be visible from a distance, and legible from a distance of two feet. If a home or commercial printer is not used, the Commission recommends that the statement be hand-printed, rather than handwritten.

Thank you for your consideration of this memorandum.

Allain for State Representative

Jonathan Wayne
Director, Ethics Commission
135 State House Station
Augusta, ME 04333

Subject: Ethics Violations

Mr. Wayne:

I am writing this letter to officially file a complaint against Doug Smith for using his clean elections funds to buy a newspaper ad that is in support of my competitor and will influence voters in this race. The attached ad has appeared in the Eastern Gazette for the past two weeks which clearly has been paid for by Senator Doug Smith.

In addition, I am also filing a complaint against both Doug Smith and Paul Davis for failing to use clear and convenient "disclosure statement" on the large road signs which have recently appeared in District 26 (see attached).

These violations not only affect my campaign but other candidates as well. In order to level the playing field and react to these violations, I urge a quick response. I can be reached by cell phone at 432.8153 and available at your request.

Sincerely,

A handwritten signature in black ink, reading "Jayson Allain". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jayson Allain
Candidate for House District 26

1250 West Main Street
Dover Foxcroft, Maine 04426
207.636.7438
Fax 207.636.7457

Allain for State Representative

ATTACHEMENT 1

FREE Premium Standard
 35¢ PER COPY
 U.S. Postage Paid
 Permit No. 35
 Dover, ME 04426



The Eastern Gazette

Your Home Town AdVantage

Volume 156 No. 42
Copyright © 2008 The Gazette, Inc.
October 18 - 24, 2008



From L to R: Row 1: Matthew, David Spooner Jr. and Meghan, PRIMCA Youth sports participants. Row 2: Brian Dankert - PRIMCA Youth sports coordinator, Brian Mullis - Mayo EMS Aztec Snow Guy - PRIMCA Board Member, Dr. Kathleen Thibault.

Donations of First Aid Kits to the PRIMCA-Mayo Regional Hospital
 has generously donated 10 first aid kits to PRIMCA youth sports. The donation makes it possible for each Y coach to have a kit with them for each practice and game. Along with the donation there will be first aid classes free of charge to all area coaches. Starting on October 27th from 7am - 9am, Brian Mullis head of Mayo EMS, Dr. Kathleen Thibault, Dr. Skip Macdonald, Dr. Dan Steinko and Liz Mullis will be giving a series of two hour classes on topics such as C-Spine control, splinting, bleeding control, airway, breathing, circulation, hypoglycemia, rolling EMS, and Dental emergencies. All coaches and assistant coaches are encouraged to attend these classes. A schedule will be posted at <http://www.primca.org> or you may call Brian Dankert at 564-7111 for more information.

★ ★ ★ ★ ★

For Maine State Senate and House

PROVEN TAXPAYER FRIENDLY

✓ **Doug Smith**
 ✓ **Paul Davis**
 ✓ **Doug Thomas**
 ✓ **Peter Johnson**

Authorized by the candidates and paid for by
 Doug Smith for Senate, Donna Hathaway, Treas.
 P.O. Box 325, Dover Foxcroft, ME 04426

★ ★ ★ ★ ★

Husqvarna

LEAF BLOWERS
 Starting at \$199⁹⁵

LEAF BLOWERS
 Starting at \$149⁹⁵

Financing Available

SNOW'S SAW SHOP

1000 Main Street, U.S. Hwy 1, Dover Foxcroft, ME 04426
 Hours: Mon - Fri 9 AM - 5 PM, Sat 9 AM - 1 PM, Sun 10 AM - 1 PM



1250 West Main Street
 Dover Foxcroft, Maine 04426
 207.636.7438
 Fax 207.636.7457

FREE

Printed on Recycled
50% CARBON SIBET
U.S. Postage Paid
Dover, ME
Permit No. 57
PSN 01-2-000000



The Eastern Gazette

Your Home Town AdVantage

Volume 156 No. 41

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October 11 - 17, 2008

ABBOTT HILL RAMBLERS

Story Page One



★ ★ ★ ★ ★
A Team You Can Trust

- ✓ **Doug Smith**
- ✓ **Paul Davis**
- ✓ **Doug Thomas**
- ✓ **Peter Johnson**

Authorized by the candidates and paid for by
Doug Smith for Senate, Donna Hathaway, Treas.
P.O. Box 325, Dover-Foxcroft, ME 04426



Husqvarna



**GIFT CARDS
AVAILABLE**

**Financing
Available**

**Are You
Ready
to Move
Snow?**

**Snowblowers
available for
most size
tractors.**

**Come in
and check
them out!**

SNOW'S SAW SHOP

Atkinson Corner, USA 564-7763/800-540-7297
Winter Hours: 7 AM - 5 PM WEEKDAYS, 7 AM - NOON SATURDAY

Allain for State Representative

ATTACHMENT 2



1250 West Main Street
Dover Foxcroft, Maine 04426
207.636.7438
Fax 207.636.7457

From: Sue4SenateDist27@aol.com [mailto:Sue4SenateDist27@aol.com]
Sent: Tuesday, October 21, 2008 2:21 PM
To: O'Brien, Gavin
Cc: jaysonallain@yahoo.com; jglavine@beavercoveart.com; tammylockhart@mainedistrict24.com
Subject: Re: Ethics Violation Complaint

Dear Gavin,

I would like to weigh in and echo the complaints that have been filed with respect to the slate ads (which have run for two weeks and are likely to run for a third unless someone intervenes quickly), and the "buddy" signs - which have my opponent together with whatever House candidate depending upon the town, spread throughout Senate District 27.

These "buddy" signs are very large and are connected in all of the situations that I have seen. There are probably 25-30 of these signs throughout Senate District 27, and typically are at major intersections. The picture that Jayson Allain sent is pretty representative of these signs. Some of these signs do have the endorsement on the bottom, but this is random and far and few between.

The failure of the Commission to act in a timely manner means that another week goes by without public correction, removal (if possible) and financial penalty. It is patently unfair to us as candidates who are following the rules and doing the right thing.

Thanks,
Sue

Sue Mackey Andrews

Candidate for Maine State Senate District #27

<http://Sue4SenateDist27.com>

e-mail: Sue4SenateDist27@aol.com

3 Shore Road North
Dover-Foxcroft, Maine 04426

Phone: (207) 564-8245
Cell phone: (207) 408-8040
FAX: (207) 564-7175

From: Beaver Cove Art [mailto:jglavine@beavercoveart.com]
Sent: Tuesday, October 21, 2008 10:43 AM
To: O'Brien, Gavin
Subject: Ethics Violation Complaint

Gavin:

Per our conversations of earlier today I am hereby requesting that the Ethics Commission rule on the issue of Slate of Candidates Advertising which has now appeared twice on the front page of the Eastern Gazette. Both ads are identical as shown in the attached scans, which also show the date of issue. Both ads clearly indicate that they were authorized and paid for by Doug Smith, though both clearly also endorse a slate of four candidates, including my opponent Peter Johnson for House District 27. Both authorizations clearly indicate that while each ad was authorized by "THE CANDIDATES" (plural), they also clearly state that they were paid for by "DOUG SMITH FOR SENATE".

As I mentioned by phone earlier today, I was under the impression that the HDCC had in fact already filed this complaint last week when the issue first arose and I am very disturbed to learn that a ruling may not be forthcoming on this issue until after the next scheduled meeting of the Commission to be held on Monday the 27th. Since it is my belief that these ads are in violation and that I will be rewarded with matching funds, I would respectfully request that since time to arrange the use of those funds will be seriously hampered by not receiving a decision until one week prior to Election Day, that this issue be taken up at your earliest convenience in order to make best use of the available funding in the short time remaining.

This publication is widely distributed to an estimated readership of over 16,000 people throughout my district according to the publisher, thus the damage done by this violation is considerably more widespread than had it appeared in a "local" paper such as the weekly issues of the Moosehead Messenger or Piscataquis Observer.

Therefore I would hope this issue can be addressed sooner than later as time of great importance.

The potential Signage Violations we discussed this morning is another issue and I believe that will be addressed by House District 26 Candidate Jayson Allain and Senate Candidate Sue Mackey-Andrews in separate complaints.

Thank you kindly for your timely consideration of this issue.

Jim Glavine - Democratic Candidate for House District 27 I can be reached for comment at any time at 207-333-2194 or at home at 207-695-3779

Wayne, Jonathan

From: Tammy Lockhart [tammylockhart@mainedistrict24.com]
Sent: Tuesday, October 21, 2008 8:01 PM
To: Wayne, Jonathan
Subject: Ethics Violation

Jonathan Wayne
Director, Ethics Commission
135 State House Station
Augusta, ME 04333

Subject: Ethics Violations

Mr. Wayne:

I am writing this letter to officially file a complaint against Doug Smith of Dover-Foxcroft, candidate for the Maine Senate, for using his clean elections funds to buy a newspaper ad that is in support of my competitor, Doug Thomas of Ripley, who is running for the District 24 House of Representatives seat. Jayson Allain, who has also filed a complaint with the ethics commission over this matter, has sent you a copy of the ad.

I believe that this is a violation of the use of Clean Election funds. If you need more information, please contact me at 207-270-1324. I am faxing a copy of this letter to your office as well as sending a formal signed letter to you.

Sincerely,

Tammy Lockhart
Candidate for the Maine House of Representatives, District 24
288 Charleston Road
Dexter, Me 04930

10/22/2008

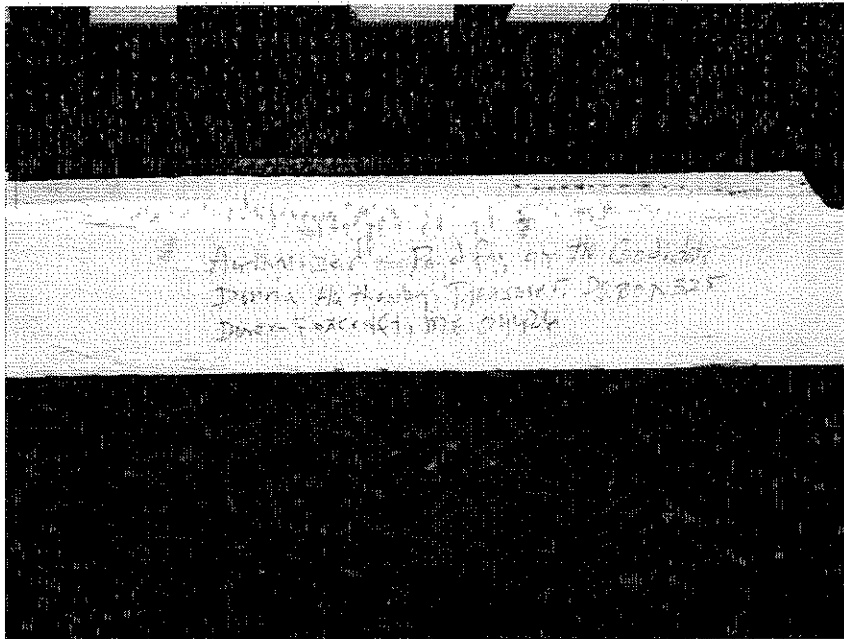
Wayne, Jonathan

From: Dib9@aol.com
Sent: Wednesday, October 22, 2008 12:39 PM
To: Wayne, Jonathan
Subject: Fwd: Smith disclosure

From: sendavis@midmaine.com
To: dib9@aol.com, sendavis@midmaine.com
Sent: 10/22/2008 12:35:26 P.M. Eastern Daylight Time
Subj: Smith disclosure

This is the disclosure on Doug's sign. It has been there sinse the day we put them up.

Get Kodak prints of this picture, and all your other favorites, at www.kodakgallery.com!

**How to save a picture**

Simply right-click on it, then "Save Image As...". (Mac users: drag the picture to your desktop.)

Free Software!

Organize, print, and share your

Get 20 Free
Prints

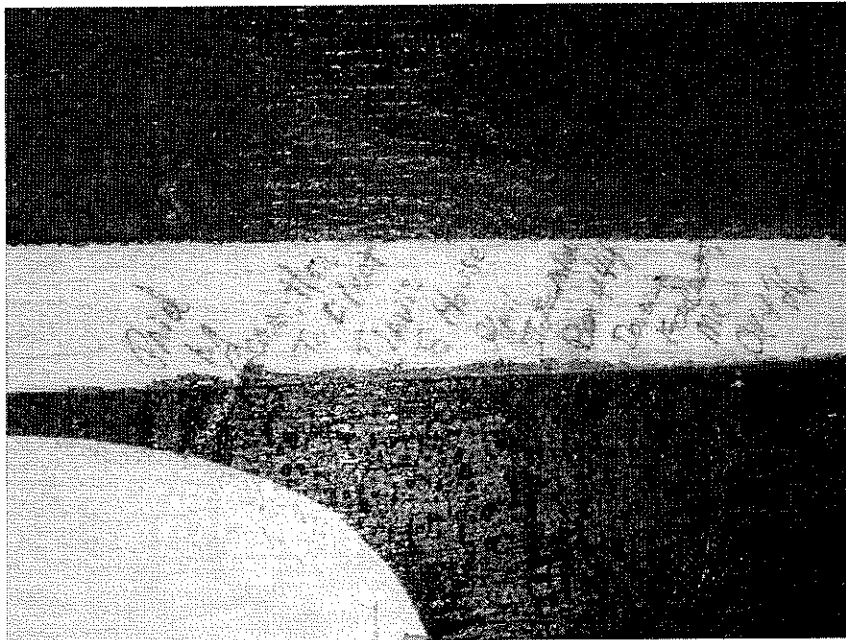
Wayne, Jonathan

From: Dib9@aol.com
Sent: Wednesday, October 22, 2008 12:38 PM
To: Wayne, Jonathan
Subject: Fwd: Davis Disclosure

From: sendavis@midmaine.com
To: dib9@aol.com, sendavis@midmaine.com
Sent: 10/22/2008 12:31:55 P.M. Eastern Daylight Time
Subj: Davis Disclosure

This is the disclosure that has been on my sign since it has been up.

Get Kodak prints of this picture, and all your other favorites, at www.kodakgallery.com!



How to save a picture


Simply right-click on it, then "Save Image As...". (Mac users: drag the picture to your desktop.)

Free Software!

Organize, print, and share your
digital photos using FREE Kodak

Get 20 Free
Prints

21-A MRSA § 1014. Publication or distribution of political communications

 **1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee that is made through a broadcasting station is not required to state the address of the candidate or committee that financed the communication.

SECRETARY OF STATE

AND

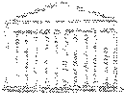
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

2008 Candidate Guide

Running for Office in Maine

2008 Candidate Guide





bers for campaign-related services. Candidates should be aware that the practice of using MCEA funds to pay family members has been criticized in the press.

With regard to all paid services provided by campaign staff, the Commission recommends keeping a record that shows how many hours of services were provided by the staff member or consultant each month, and a description of services provided that month.

Candidates should be aware that the practice of using MCEA funds to pay family members has been criticized in the press.

There is a least one bill that will be introduced in the Second Session of the 123rd Legislature to prohibit family members from being paid with MCEA funds.

Sharing Expenditures with Other Candidates

★ Candidates may share expenses for goods such as joint campaign literature or advertising. To avoid making or receiving an in-kind contribution, each candidate should make a reasonable effort to pay a portion of the overall cost that is proportionate to the benefit received by the candidate.

Selling Property Purchased with MCEA Funds

MCEA candidates may not use public funds to purchase goods to sell at a profit. After the election, candidates are required to sell any goods purchased with MCEA funds that could be used for the candidate's personal use (e.g., computers, fax machines, cell phones). The candidate must return the proceeds to the Commission with the report due 42 days after the election. Candidates may keep and re-use goods that have value only to the campaign (e.g., signs and campaign literature).

Over Spending Authorized MCEA Funds

Candidates can avoid spending more than their authorized MCEA funds by:

- Appointing a treasurer who will actively manage the campaign's finances and be responsible for keeping records and recording expenditures;
- Keeping a record and receipt for every expenditure made with MCEA funds, no matter how small;
- Keeping a balance sheet that shows a running total of spent (and obligated) and unspent MCEA funds;
- Using a check or debit card for the campaign account to pay for goods and services; and
- Minimizing the use of the personal funds of the candidate or supporters to make campaign expenditures and minimizing the number of reimbursement.

THOMAS FOR THE HOUSE
DOUGLAS A THOMAS
306 STREAM RD
RIPLEY, ME 04930

115
52-74472112
BRANCH 1


DATE Oct 22, 68

PAY TO THE ORDER OF Doug Smith for Senate \$ 150.00

One hundred fifty and no/100 — DOLLARS

Skowhegan Savings Bank
SKOWHEGAN, MAINE 04976

Thomas Smith House
George C. Thomas
Dean

PETER JOHNSON ELECTION COMMITTEE P O BOX 697 GREENVILLE, ME 04441		144 52-145/112 BRANCH 23
PAY TO THE ORDER OF <u>Doug Smith For Senate</u>		DATE <u>10/22/08</u>
<u>One Hundred Fifty \$/100</u>		\$ <u>150</u> ^{xx} / ₁₀₀
Camden National Bank Roots You Can Bank On. Member FDIC <u>Smith, Johnson, Davis, Thomas</u> FOR <u>Portion / For Gayle Ad.</u>		DOLLARS  SECURITY ONWARD SOLUTIONS
<u>Helena Johnson</u>		MP

RECEIVED

OCT 22 2008

MAINE ETHICS COMMISSION